



An
Bord
Pleanála

Inspector's Report ABP 314184-22

Development	Dwelling house with sewage treatment system, domestic garage and all associated site development works
Location	Kilkenny, Glenties, County Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250037
Applicant(s)	Debbie Goligher
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Shamus Kelly
Observer(s)	None
Date of Site Inspection	13th August 2023
Inspector	Rosemarie McLaughlin

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1.0 Site Location and Description

- 1.1. The appeal site is located in a rural area in west Co. Donegal, c 6 km northwest of Glenties on a local road (L2513) that runs broadly parallel to the Glenties/Dungloe coastal section of the N56. The site has panoramic views of Gweebarra Bay and islands to the north. The northern side of the local road is a northern facing slope of a hill that falls away in a northerly direction towards the N56 and Gweebarra Bay. The L shaped site outlined in red, 0.975 ha is part of a larger rectangular landholding outlined in blue that extends from the L2513 northwards to the lower level N56. The L shape of the subject site wraps around a site that fronts the local road.
- 1.2. Opposite the subject site, elevated on the southern side of the local road, is a detached house located within a ribbon of 5 houses and several more houses are located sporadically along this side of the road. To the west of the appeal site is a house and garage. To the east of the appeal site, adjacent to a lane which bounds a school site, is a large area of land has been cleared back and a short but distinct bend in the road is present at this area.
- 1.3. No speed limits signs are evident on the L2513 road which is a narrow, undulating and winding road with restricted visibility in places and is c.3 km long connecting to the N56 at the east and west. Approximately 50 dwellings are accessed of this road, which it is characterised by sections of ribbon development and a significant number of one-off houses that are generally oriented towards Gweebarra Bay.
- 1.4. Kilkenny National School is located east of the appeal site where the distance is unclear because of discrepancies in the drawings. The level difference across the site is c 20 m from road level at the south at 117m to 97m at the northern red line boundary.
- 1.5. The roadside boundary comprises of a ditch and rushes are evident on parts of the site. The northern end of the site is planted. Bedrock outcrop at surface is present on parts of the site. A watercourse (Code:MULNAMIN_BEG_010) is located within the application site blue line, c 57 m north and down slope from the boundary of the red line. The watercourse commences at the public road to the east of the appeal site, travels north and then turns east parallel to the (northern) red line boundary and flows in a north westerly direction into Gweebarra estuary and the West of Ardara/Maas Road SAC, Site code:000197.

- 1.6. It may be noted that the boundaries indicated on the site layout plan and OS plans submitted (with red lines) do not correspond in the application or further information (FI) submissions and are significantly different.

2.0 Proposed Development

- 2.1. The proposed development is for a 260 sqm single storey house which presents as 2 staggered long form structures with pitched roofs connected by a flat roof structure and a double garage 84.6 sqm with a double pitch roof. The house is designed with extensive glazing towards Gweebarra Bay, Errigal, and towards the west. Water supply is proposed from public mains and a packaged wastewater treatment system with a gravity fed soil polishing filter system. The proposed house is on the lower level of the site within the red line which is set back from the local road behind an undeveloped site fronting the local road. No other properties in the vicinity are located along this level of the sloping area as they are generally located closer to the local road or the N56 lower level.
- 2.2. Further information was submitted that provided additional details but did not amend the proposed layout of house, garage, sewage treatment or road. A section across the site was provided, with gradients, cut and fill and additional details on the sewage treatment.
- 2.3. A new road access is proposed c 99m long which bends providing a gradient of 4 % for 20 m length, a 17% gradient for 56m and a 10 % gradient for 23 m. The section of the proposed road illustrates that at higher level of the site, the site will be cut over 28 m and filled along the lower section of the proposed new road. Fill is also proposed on the northern end of the site between the 103 m and 105 m levels, forward and to the north of the main front elevation of the house.
- 2.4. Drainage is proposed along the western boundary, where surface water will be discharged into the watercourse that flows eventually into the Gweebarra estuary and the West of Ardara/Maas Road SAC.

3.0 Planning Authority Decision

3.1. Decision

Permission was recommended to be granted subject to 14 conditions. The relevant conditions may be summarised as follows and the remaining are considered standard conditions applicable to a one off rural dwelling.

1. The application to be carried out in accordance with drawings submitted as part of further information, a letter from a solicitor and a letter from the current landowner.
2. The dwelling is subject to a Section 47 restrictive condition to the use/ occupation.
3. Visibility splays of 50 metres to be provided in each direction.
4. Details in relation to roadside boundary.
11. Planting to be retained at southwest boundary.
14. Contribution required for dwelling house over 200 sqm.

3.2. Planning Authority Reports

3.2.1. Planning report 14/32022

- 3.2.2. This planning report refers to three No. 3rd party submissions which object to the proposed development on the grounds that the applicant does not satisfy the rural housing need requirement, the development exacerbates ribbon development, is speculative development, that permission was refused previously by the Board, the site is of high scenic value contributing to tourism and the development is contrary to the County Development Plan (CDP). The objections also reference the traffic survey was conducted while Kilkenny National School may have been closed, distorting the traffic flow figures and the entrance is on a section of road that is deficient in alignment and vision lines. The objections include that the water pressure in the area is poor and previous planning reports indicates the site may not be capable of having a wastewater treatment system.

- 3.2.3. The planning report responds to the objections and accepts the rural housing need is satisfied in a structurally weak area, that the development is not ribbon development as defined and the siting and design is of low impact which will nestle into the receiving landscape. The response considers that the traffic survey submitted demonstrates a derogation in terms of the vision lines are acceptable and 50 metres vision lines can be achieved. The planning assessment acknowledges the previous decision of the Board.
- 3.2.4. The planning assessment considers there is precedent for low impact single story dwellings on the seaward side of the public road and the proposed development is visually acceptable, but Further information (FI) was required in relation to window design.
- 3.2.5. FI was required from the applicant to demonstrate documentary legal evidence of ownership and to clarify vision lines which traversed third party lands. The submitted traffic survey demonstrated that the 85th percentile of vehicles using this road was 39.89 kilometres per hour and therefore a derogation in vision lines to 50 metres was sought. The PA was satisfied to accept the traffic survey submitted having regard to the small scale of the school and volume of traffic associated with same.
- 3.2.6. Further information was also solved in relation to the exact location of the wastewater system and a section through the site demonstrating cut and fill.
- 3.2.7. **Planning report 27/6/2022**

The further information submitted was considered acceptable and may be summarised as follows.

- A letter confirmed the applicant's sister entered into a contract to purchase the property subject to planning and a consent letter was received from the current landowner. Consent was given to achieve and maintain vision lines over the owners lands.
- Details have been provided that the applicant intends to relocate to the area on a permanent basis to live and work with her sister. The applicant will have no other permanent residents on construction of this dwelling. A supporting letter from a county councillor was submitted and accepted. The subject site is

located within a structurally weak rural area and based on the information provided the PA accepted genuine rural housing need.

- A revised layout plan with the proposed wastewater treatment system is provided. A cross section has been provided detailing the extent of infill and excavation. The applicant made a case to retain the arched windows, and this was accepted.
- Having regard to the subject site within a structurally weak rural area it is considered the planning permission should be granted.

3.3. Other Technical Reports

3.3.1. Roads report dated 16th of February 2022

- No objection subject to conditions. This report involves a standard set of criteria to which the engineer ticks certain boxes and the report is titled *Roads And Transport Planning Report Form In Accordance With The County Development Plan 2012 -2018*. I note point 8 relating to driveway gradient has not been filled in.

3.3.2. Environmental Health Report 17/2/22

- No objection subject to conditions.

4.0 Planning History

ABP PL05B.233212 PA Ref. 08/3073 Permission was refused after a third party appeal. The 3 no. reasons for refusal related to:

- Rural housing need criteria
- Visually intrusive
- Substandard road

ABP PL 05B. 233212 PA Ref. 09/30631 Permission was refused after a third party appeal. The 4 no. reasons for refusal related to:

- Rural housing need criteria
- Endanger public safety by reason of traffic hazard and obstruction of road users

- Detract to an undue degree from the rural character of the area and would consolidate a pattern of ribbon development
- Prejudicial to public health and presents an unacceptable risk of water pollution

It may be noted that the site configuration of the red line was different in the planning history and current application.

5.0 Policy and Context

5.1. Development Plan

The County Donegal Development Plan 2018-2024 applies,

- 5.1.1. On Map 6.2.1 Rural Area Types: The site is located within a Structurally Weak Rural Area. Map 7.1.1 Scenic Amenity Designations: The site is within designation HSA (high scenic amenity).
- 5.1.2. Areas of High Scenic Amenity (HSA) are defined “*landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.*”
- 5.1.3. The following summarised objectives are of most relevance:
- 5.1.4. RH-O-4: To protect rural areas immediately outside towns from intensive levels of residential development and thus safeguard the potential for incremental growth of the towns and their potential beyond the plan period; to utilise existing physical and social infrastructure; and to avoid demand for the uneconomic provision of new infrastructure.
- 5.1.5. RH-O-5: To promote rural housing that is located, designed and constructed in a manner that is sustainable and does not detract from the character or quality of the receiving landscape having particular regard to the Landscape Classifications.

- 5.1.6. NH-P-7: Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) and subject to the other objectives and policies it is the policy to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.
- 5.1.7. NH-P-17: To preserve the views and prospects of special amenity value and interest, in particular, views between public roads and the sea, lakes and rivers. In this regard, development proposals situated on lands between the road and the sea, lakes or rivers shall be considered on the basis of the several criteria.
- 5.1.8. RH-P-1: It is a policy of the Council that requirements apply to all proposals for rural housing including in summary:
- Best Practice in relation to the siting, location and design of rural housing.
 - be sited and designed in a manner that enables the development to assimilate into the receiving landscape and that is sensitive to the integrity and character of rural areas
 - be located in such a manner so as not to adversely impact on Natura 2000 sites or other designated habitats of conservation importance, prospects or views including views
 - Not negatively impact on protected areas defined by the North Western International River Basin District plan
 - Site access/egress shall be configured in a manner that does not constitute a hazard to road users or significantly scar the landscape, and shall have regard to Policy T-P-15
 - Provide for the safe and efficient disposal of effluent and surface waters in a manner that does not pose a risk to public health
 - Individual dwellings shall be subject to the flood risk management policies
 - In the event of a grant Council will attach an Occupancy condition which may require the completion of a legal agreement.
- 5.1.9. RH-P-2: Consider proposals for a new rural dwelling which meets a demonstrated need (see Policies RH-P-3–RH-P-6) provided the development is of an appropriate quality design, integrates successfully into the landscape, and does not cause a

detrimental change to, or further erode the rural character of the area. In considering the acceptability of a proposal the Council will be guided by several considerations summarised as-

- avoid the creation or expansion of a suburban pattern of development in the rural area;
- not create or add to ribbon development (see definitions);
- not result in a development which by its positioning, siting or location would be detrimental to the amenity of the area or of other rural dwellers or would constitute **haphazard** development.
- will be unacceptable where it is prominent in the landscape; and shall have regard to Policy T-P-15;
- will be unacceptable where it fails to blend with the landform, existing trees or vegetation, buildings, slopes or other natural features which can help its integration.
- Proposals for development involving extensive or significant excavation or infilling will not normally be favourably considered nor will proposals that result in the removal of trees or wooded areas beyond that necessary to accommodate the development. The extent of excavation that may be considered will depend upon the circumstances of the case.

5.1.10. RH-P-4: Structurally Weak Rural Areas: *It is a policy of the Council to consider proposals for new one-off housing within structurally weak rural areas from any prospective applicants with a need for a dwelling house (urban or rural generated need), provided they demonstrate that they can comply with all other relevant policies of this Plan, including RH-P-1 and RH-P-2. New holiday home development will not be permitted in these areas.*

5.1.11. Ribbon Development: "In general 5 houses on any one side of 250 metres road frontage".

5.1.12. TOU-O-8: Support the development of and protect the functionality of key tourism access infrastructure into and throughout the county such as roads infrastructure (including the N56)

5.1.13. Table 2 Appendix 3: Internal Residential/Industrial Roads Access Point Section adjacent to Public Road, the Maximum internal road gradient for a Single Access is 15m @ 2.5% annotated that this can be relaxed to 5m dwell area and 4% in difficult circumstances.

5.1.14. Table 3 Appendix 3: Vision Lines at accesses to Non-National Rural Roads, outside 60kph speed limit zone: Various depends on speed.

5.2. National Policy

5.2.1. National Planning Framework

- NPO 15 – encourage growth and arrest decline in areas that have experienced low population growth or decline in by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.
- NPO 19 - Ensure, in rural housing, that a distinction is made between areas under urban influence.

5.3. Sustainable Rural Housing, Guidelines for Planning Authorities (2005)

5.3.1. The Guidelines confirm development plans should identify the location and extent of rural area types as identified in the NSS (now superseded by the NPF).

5.4. EPA Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10) 2021

5.4.1. Site suitability assessments should include the location of any archaeological or natural heritage sites [special areas of conservation (SACs), special protection areas (SPAs), etc.] within 1 km of the proposed site should be identified.

5.5. Natural Heritage Designations

West of Ardara/Maas Road SAC (000197) is located c 240 m northwest of the appeal site. This SAC is fragmented and is also located in the estuary c 340 north of the appeal site.

Qualifying Interests of Ardara/Maas Road SAC are as follows:

- Estuaries [1130]

- Mudflats and sandflats not covered by seawater at low tide [1140]
- Large shallow inlets and bays [1160]
- Annual vegetation of drift lines [1210]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Embryonic shifting dunes [2110]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Decalcified fixed dunes with *Empetrum nigrum* [2140]
- Atlantic decalcified fixed dunes (*Calluno-Ulicetea*) [2150]
- Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) [2170]
- Humid dune slacks [2190]
- Machairs (* in Ireland) [21A0]
- Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*) [3110]
- Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoeto-Nanojuncetea* [3130]
- Northern Atlantic wet heaths with *Erica tetralix* [4010]
- European dry heaths [4030]
- Alpine and Boreal heaths [4060]
- *Juniperus communis* formations on heaths or calcareous grasslands [5130]
- Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites) [6210]
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]
- Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) [6510]
- Blanket bogs (* if active bog) [7130]
- Depressions on peat substrates of the *Rhynchosporion* [7150]
- Alkaline fens [7230]

- *Vertigo geyeri* (Geyer's Whorl Snail) [1013]
- *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]
- *Euphydryas aurinia* (Marsh Fritillary) [1065]
- *Salmo salar* (Salmon) [1106]
- *Lutra lutra* (Otter) [1355]
- *Phoca vitulina* (Harbour Seal) [1365]
- *Petalophyllum ralfsii* (Petalwort) [1395]
- *Najas flexilis* (Slender Naiad) [1833]

A number of other European sites are located within the c 15 km wider area as summarised below:

- Gannivegil Bog SAC c.6.5 km
- Lough Nillan Bog (Carrickatlieve) SAC c.7km
- Rutland Island and Sound SAC Site Code 002283 c 12km
- Slieve Tooley/Tormore Island/Loughros Beg Bay SAC Site Code 000190 c 12 km
- Cloghernagore Bog and Glenveagh National Park SAC Site Code 002047 c 14.7 km
- Coolvoy Bog SAC 11.5km
- Inishkeel SPA- 6.4km
- S.P.A.Sheskinmore Lough SPA- 6.5km
- West Donegal Coast SPA-9.2 km
- Lough Nillan Bog SPA-. 6.6k m
- Derryveagh And Glendowan Mountains SPA-2.3km
- Illancrone and Inishkeeragh SPA-14 km

5.6. EIA Screening

The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal may be summarised as follows.

- Over the last 20 years, the Council and the Board, have referenced the nature of the Kilkenny Road as narrow, undulating and not able to accommodate additional development. The planning history is referred to. The road has not been improved and indeed is significantly worse and does warrant significant upgrading by the number of properties and vehicles need to be limited.
- The initial planning application indicated that the applicant was the owner and when further information was requested, it was stated that the land is owned by the applicant's relative. The land can only be owned if it was purchased after planning permission was granted. The landowner has sought to develop the site historically and has lodged numerous planning applications.
- The applicant fails to provide substantive connection to the area that warrants permission to build a new house. If the applicant wishes to reside in the area the usual options are available without the construction of a new property.
- This site is a highly scenic rural area. Further development should be limited to ensure the area retains its rural character, scenic qualities and enhance the high value of tourism in the area. The road is signposted and recognised as a scenic route as the road provides panoramic views of the estuary which is designated for its entire length as an area of especially high scenic amenity. Further development would degrade the views and prospects.
- The objective is to retain as many rural and natural views between the road and the sea.

- Although the plans show the property set back from the road, the development and extensive excavation, cut and fill, and will materially alter the environment and the views from the roadside. The multiple buildings and build would involve high levels of construction traffic on a substandard road network.
- The development would consolidate a pattern of haphazard development given rise to excessive density of development in a rural area lacking in public services.

6.2. Applicant Response

6.2.1. The response of the applicant which is accompanied by a series of photographs may be summarised as follows.

- The response to the appeal includes two panoramic photographs of the hillside with the location of the proposal indicated.
- The site is designated as a structurally weak rural area within the county development plan and the application complies with the provisions. This is not a speculative development or holiday home as the applicant is proposing to relocate to this rural area in order to reside and work remotely from home within close proximity to her family.
- In relation to title, following clarifications, the landowner has provided sufficient written consent in order to allow the making of the application. Consent has been provided for the provision of vision lines at the site entrance as required. Further detail is provided by the applicant's solicitor that a contract has been agreed concerning the sale of lands upon a grant of planning permission.
- The salient point in the rural housing policy is that the site is located within a structurally weak rural area and policy RH-P-4 for applies where proposals for new one off housing from any perspective applicants with a need for a dwelling house urban or rural generated need provided they comply with other relevant policy 's may be considered. Notwithstanding that it is not required to

provide any link to the rural area the applicant has provided details of relocating to be close to her sister.

- While previous applications by the landowner may have resulted in new holiday homes in the area, such facts are unrelated to this application which must be considered on its merits. A letter from the applicant demonstrating her need to live in this area is appended to the response to the appeal. That letter which has not included an address indicates the applicant lives in Northern Ireland and is required to sell her home and accordingly wishes to live close to her sister.
- A section 47 condition has been imposed by the council which ensures the dwelling cannot be sold or used as a holiday home.
- Structurally weak rural areas experience persistent and significant population decline as well as a weaker economic structure. The nearby Kilkenny national school experienced continual falling pupil numbers and an ongoing struggle to survive.
- It is the case that the majority of houses in close proximity to the site are owned and used as holiday homes as in the case of the appellant. PAs must seek to facilitate regeneration for the benefit of fragile rural communities. It is clear the applicant complies in full with the local and national rural housing policy.
- Reference is made to the PA assessment which does not consider the proposed development as ribbon development. Ribbon development is characterised by high density of almost continuous road frontage type developments such as five houses on one side of a given 250 metre road frontage. The proposal is not on the opposite side of the road where five dwellings exist. The proposal will be largely obscured by its sighting in design. The proposal would be below the level of the local road.
- The planning assessment that the visual impact is acceptable is quoted. The site is unaffected directly by any designated views and is designated as an area of high scenic amenity which indicates it has the capacity to absorb sensitively located development. Having regard to the topography of the site and the low impact type dwelling design it is submitted that the proposal

would cause no adverse visual impact on the wider scenic views. For users along the N56 below, the site the dwelling would be rarely noticeable in the hillside whilst too infrequent passerby's on the local road the dwelling would not be visible at all. The proposal complies with policy's RH-P-1 and RH- P-2 of the county development plan.

- Construction traffic would likely be one off and temporary. The local authority has accepted on the basis of a speed survey that reduced vision lines of 50 m would be entirely acceptable. These vision lines are achievable and consent has been provided and the county engineer is satisfied. The majority of houses in close proximity are holiday homes with infrequent visitors. The only frequent and daily user of the road is the local postman. The proposed dwelling will generate few trips to and from the house as the applicant will work remotely.

6.3. Planning Authority Response

- The planning authority reiterated their previous planning reports.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. The issues arising in this assessment may be addressed under the following headings.

- Principle of development / Rural Housing Policy
- Consent and issue with submitted drawings- New issue
- Design and impact of development within landscape setting
- Vehicular Access and traffic

- Wastewater Treatment
- Appropriate Assessment

7.2. Principle of development / Rural Housing Policy

- 7.2.1. The appeal site is located in a structurally weak area. Policy RH-P-4 considers proposals for new one-off housing from “any prospective applicants with a need for a dwelling house” provided they demonstrate that they can comply with “all other relevant policies” and holiday home development will not be permitted. The response to the appeals includes a letter with no address from the applicant, who states she lives in Northern Ireland and stating the need for a dwelling house close to her relative. A letter of support from a Councillor was made to the PA. The application form indicated the applicant lives in Co. Donegal. The Rural Housing Guidelines identify structurally weak rural areas as areas that exhibit characteristics such as persistent and significant population decline as well as a weaker economic structure based on indices of income, employment, and economic growth. Holiday homes are not permitted in these areas in in the CDP. The applicant points out that many of the houses in the vicinity are holiday homes in the response to the appeal.
- 7.2.2. Policy RH-P-4 allows wide scope for applications for one off houses in structurally weak areas and as the applicant’s agent point out, there is no requirement for the applicant to demonstrate any of the housing needs associated with the more stringent rural housing polices in the CDP. I consider that the adopted policy is that any applicant with the need for a house may in principle apply in a structurally weak area such as the subject area for a dwelling, subject to meeting all other relevant polices.
- ## **7.3. Consent and issue with submitted drawings - New Issue**
- 7.3.1. The boundaries indicated on the site layout plans and OS plans submitted (both with red lines) do not correspond in the application drawings (or further information) and are significantly different. The OS maps submitted demonstrate a road frontage of c 48m. The site plans outlined in red at 1:500, illustrate larger sites with c 79m road frontage, as they include another parcel on land to the east.
- 7.3.2. An issue around ownership resulted in the PA seeking FI and the appeal queried the role of the relative giving consent. The owner of the site has given permission in the

FI, to make an application on lands with a specific folio reference and to maintain sight lines by removing hedges etc. While I consider permission has been given for an application to be made, the incorporation of a considerable section of land that is outside the submitted OS map boundary line remains an issue particularly as it includes part of the vision line. I also note the stated folio number does not include the parcel of land on the east included in the site plan. This was not raised in the appeal and may be considered a new issue. As the red line requirements of Articles 22 and 23 of the Planning and Development Regulations 2001 as amended, do not correspond, I consider the application cannot be properly assessed and the application should be refused for this reason and in the interest of clarity.

7.3.3. Notwithstanding the above, I will continue to assess the appeal grounds below to provide a full assessment.

7.4. Design and impact of development within landscape setting

- 7.4.1. The landscape characterisation is that of High Scenic Amenity. Policy RH-P-2 seeks to ensure that new dwellings integrate successfully into the landscape and do not cause a detrimental change to, or further erode the character of the area with several design criteria to be applied. The proposed development is considerably set back from the local road with the rear of the proposed house c 60 north of the road on the lower slopes of the site. The low level of the two parallel pitch roof structures and double garage will be largely screened from the local road, as intended by the design and because it is north and rear of another site that fronts the local road.
- 7.4.2. The view of the appellants is that the proposal contributes to haphazard and ribbon development. The PA have assessed the proposal within the strict ribbon development definition as provided in the CDP as 5 houses on one side of the road and consider the proposal acceptable.
- 7.4.3. The response to the appeal includes two panoramic photographs of the hillside with the location of the proposal and this clearly illustrates the level on the hill where the development is proposed and a number of the houses in the close vicinity.
- 7.4.4. The local road c 3 km has c 50 dwellings on both sides of the narrow rural road served by a multitude of accesses on both sides of the road and a school. The appeal site is located adjacent to one dwelling site where that house is located closer to the local road than the proposed development. The proposed development at the

lower level on the slope towards to the coast, and behind a site fronting the road, introduces a new building line in this vicinity which is higher than the properties on the N56 and c 60m lower than the local road. While the lower slopes of the site at the N56 are planted, the proposed development introduces a plateau of c 44 metres depth centrally within the site (partially provided by cut and fill) accessed by a long access road that curves to improve the gradient up to the local road. I consider this as visible from the N56, introducing a new line of development and a scar on the hill side which represents a haphazard form of development in an area designated as High Scenic Amenity. This would also be contrary to policy RH-P-1 where site access/egress shall be configured in a manner that does not significantly scar the landscape.

7.4.5. While the proposal is set back from the local road, I consider that in combination with the other visible dwelling houses on varying levels, the proposed structure in this part of the site, creates a haphazard, ad hoc settlement pattern and would not be absorbed sensitively into the receiving landscape which is designated as an area of High Scenic Amenity. In the winter, I consider that the proposed development will be particularly visible and contrary to the CDP planning policies NH-P-7, RH-P-1 and RH-P-2. I also consider that permission on this level of the hill would set an undesirable precedent for further development on the lower slopes, accessed from the local road and should be refused.

7.4.6. A separate ground in the appeal is that the area is tourist route, and the proposal impacts negatively. Policy TOU-O-8 supports the development of and protects the functionality of key tourism access infrastructure into and throughout the county such as roads infrastructure and specifically includes the N56. The N56 at the lower level of the site within the blue line provides panoramic views of the area and the Gweebarra bridge. The CDP plan policy TOU-O-8 appears to apply to infrastructural protection rather than scenic protection. As I consider the proposed development does not assimilate in the landscape, this point need not be addressed further.

7.4.7. I do not consider policy NH-P-17 applies as there are limited views between the local public road and the sea owing to the natural planting along the roadside boundary at the subject site.

7.5. **Vehicular Access and traffic**

- 7.5.1. The PA consider that vision lines of 50m in each direction as adequate and consider that even if the traffic survey took place when the school was closed, the traffic survey is satisfactory and references that a derogation to 50 m sightlines are proposed. The applicant has not responded to the specific grounds around the survey date but put forward the case that most of the dwellings are holiday homes, the school population is declining so the road is very lightly trafficked. No Council roads report was carried out on foot of the FI which was provided in relation to the road and proposed gradient.
- 7.5.2. The CDP Table 2 Appendix 3 provides maximum internal road gradients for a single access is 15m @ 2.5%. The CDP annotates that this can be relaxed to 5m dwell area and 4% in difficult circumstances. The proposed gradient is illustrated along the new road on FI Drawing NO.P-006 does not appear correspond with the CDP and no justification has been provided to justify difficult circumstances.
- 7.5.3. Table 3 Appendix 3 of the CDP outlines proposals for single accesses onto local roads, such as that fronting the appeal site, where an 60-80km/hr speed limit applies a 90m to 120m vision lines in both directions from a point 2.4m setback from the roadside would be required. Up to 42km requires 50 m vision lines. The Plan also states that deviation from these requirements may be considered upon certification by the applicant's designer and a survey was provided.
- 7.5.4. The applicant has included a survey over a two hour period 11am-1pm, in November 2021, where the average speed was recorded at 34.8km per hour and was very lightly trafficked. I consider that given the location of the site within very close proximity to a school, that the morning and/or evening school/work time is not reflected in that survey, and it is inadequate for a proper assessment. Furthermore, the timing of the survey was conducted while certain covid restrictions were in place. The survey does not show the direction the vehicles were traveling. While the applicant states that the school population is declining, no details are provided. As an estimate, even if the small school has 18 students (Dept. of Education 2021) with 2/3 staff, clearly the traffic movements in the morning when combined with persons travelling to work would be much higher than the traffic survey submission. I consider that the close proximity to a school site where students could be travelling by foot or cycle, would not favour the proposed vision lines on a substandard road, in terms of width and alignment.

- 7.5.5. In relation to the applicants assertion that most of the properties are holidays homes, a traffic survey only in the winter is also not considered as adequate. I note that a scenic route sign directs traffic to this road, off the N56 at the eastern access point which also direct traffic to this road in the summer period.
- 7.5.6. A further issue in relation to traffic, is that the redline of the site plan as highlighted earlier is larger than the site outline in the OS map. In this regard, there is no clarity that this section of the site is within the ownership of the person giving consent to make the application to provide the vision lines, as the 50 m vision line (terminating at the small bend in the road) extends into the area in question to the east.
- 7.5.7. Accordingly, I do not consider that the proposed access/egress in terms of the vision lines as satisfactory, in an area where the visibility and alignment are deficient and would interfere with the safety and free flow of traffic in an area proximate to a school and accordingly would endanger public safety by reason of traffic hazard and obstruction of road users.

7.6. **Wastewater Treatment**

- 7.6.1. The site characterisation confirms the the ground water vulnerability of the site as “X” extreme. The GSI maps and site characterisation form indicate the site is located over an aquifer, classified as PI (Poor – Bedrock Aquifer). Bedrock outcrop was noted c 1.95 m below ground level. The submitted report indicates that the water table was met at c 1.75 below ground level, the presence of some rush outcrop could pose a potential threat to both the groundwater and surface water and this would be improved with improvements to a land drainage programme around the site.
- 7.6.2. The conclusion of this report is that the site is suitable for a packaged wastewater treatment system with a gravity fed soil polishing filter system. It is recommended that the infiltration pipes be placed at existing ground level and soils within 1.2 metre below existing ground levels should be excavated within the site. Provision is recommended for discharge of surface water beyond the percolation field. A gravel filled land drain should also be constructed up gradient in order to protect the area from surface water runoff given the elevated and undulating nature of the site.
- 7.6.3. In relation to the requirement to note the presence of significant sites, the submitted report states that none were found upon examination. I consider that reference to the West of Ardara/Maas Road SAC Site code 000197SAC in the vicinity should have

been included, particularly as the proposed land drainage layout of the FI drawings indicates that the drainage is to connect to a watercourse Code:MULNAMIN_BEG_010, which is located on the overall landholding and discharges into the SAC. I also note the form states there are houses to the south and west but does not specify the number of the individual treatment systems within a 250 m radius of the appeal site which I estimate a c 11 properties.

7.6.4. Having regard to the above, I do not consider that the applicant has demonstrated adequately that given the soil conditions and the drainage proposal to discharge surface water into a water course that is hydraulically connected to the special area of conservation that the proposed development would not present an unacceptable risk of pollution to a Natura 2000 site.

7.7. Appropriate Assessment Screening

7.8. Neither a screening for appropriate assessment nor a Natura Impact Statement (NIS) were submitted with the application. The PA considered that an NIS was not required. This issue is not raised in the appeal but the Board will undertake a screening.

7.9. Stage 1 Screening:

7.10. The Board as the competent authority will undertake a screening exercise pursuant to Part XAB of the Planning and Development Act 2000 as amended to assess, in view of best scientific knowledge, if a proposed development, individually or in combination with another plan or project is likely to have a significant effect on the European site.

7.11. Proposed development and receiving environment

7.12. The proposed development is described in section 1 and the receiving environment in section 2 above.

7.13. Description of European Sites

7.14. The list of sites within a c15 km radius is provided in section 5.4

7.15. Is the Project necessary to the Management of European sites?

The project is not necessary to the management of a European site.

7.16. Direct, Indirect or Secondary Impacts

7.17. The potential direct, indirect and secondary impacts that could arise as a result of the proposed works, which could have a negative effect on the qualifying interests of European sites, include impacts on water quality during the construction phase, e.g. via release of suspended solids and impacts on water quality during the operation phase, e.g. via release of pollutants from wastewaters arising.

Using the source-pathway-receptor model, there is potential direct connectivity as the proposed drainage on site is to connect into a watercourse to the north of the site (Code: Mulnamin_Beg_010) that flows into the West of Ardara/Maas Road SAC Site code 000197.

The conservation objectives for West of Ardara/Maas Road SAC (and EPA ref. numbers) are:

- 1130 To maintain the favourable conservation condition of Estuaries
- 1140 To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide
- 1160 To maintain the favourable conservation condition of Large shallow inlets and bays
- 1330 To restore the favourable conservation condition of Atlantic salt meadows (*Glaucopuccinellietalia maritima*)
- 1410 To maintain the favourable conservation condition of Mediterranean salt meadows (*Juncetalia maritimi*)
- 2120 To maintain the favourable conservation condition of Shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes')
- 2130 To restore the favourable conservation condition of Fixed coastal dunes with herbaceous vegetation ('grey dunes')
- 2140 To maintain the favourable conservation condition of Decalcified fixed dunes with *Empetrum nigrum*
- 2150 To maintain the favourable conservation condition of Atlantic decalcified fixed dunes (*Calluno-Ulicetea*)
- 2170 To maintain the favourable conservation condition of Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*)

- 2190 To maintain the favourable conservation condition of Humid dune slacks
- 21A0 To restore the favourable conservation condition of Machairs
- 3110 To maintain the favourable conservation condition of Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*)
- 4010 To restore the favourable conservation condition of Northern Atlantic wet heaths with *Erica tetralix*
- 4030 To restore the favourable conservation condition of European dry heaths
- 4060 To restore the favourable conservation condition of Alpine and Boreal heaths
- 5130 To maintain the favourable conservation condition of *Juniperus communis* formations on heaths or calcareous grasslands
- 6210 To maintain the favourable conservation condition of Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco Brometalia*)
- 6410 To maintain the favourable conservation condition of *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- 6510 To maintain the favourable conservation condition of Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*)
- 7130 To restore the favourable conservation condition of Blanket bogs
- 7150 To maintain the favourable conservation condition of Depressions on peat substrates of the *Rhynchosporion*
- 7230 To maintain the favourable conservation condition of Alkaline fens
- 1013 To maintain the favourable conservation condition of Geyer's Whorl Snail
- 1029 To restore the favourable conservation condition of Freshwater Pearl Mussel
- 1065 To maintain the favourable conservation condition of Marsh Fritillary
- 1106 To maintain the favourable conservation condition of Atlantic Salmon

- 1355 To maintain the favourable conservation condition of Otter
- 1365 To maintain the favourable conservation condition of Harbour Seal
- 1395 To maintain the favourable conservation condition of Petalwort
- 1833 To maintain the favourable conservation condition of Slender Naiad

7.18. The site synopsis of the West of Ardara/Maas Road SAC, in summary, states that is of great ecological interest, containing a large number of habitats and species which are listed in the E.U. Habitats Directive (specifically, six priority habitats, 20 non-priority habitats and eight species). The site exhibits a highly diverse range of both coastal and terrestrial habitats, this feature itself being of high scientific value. The estuaries of the Gweebarra, Owentocker and Owenea Rivers form the most extensive habitats in the site. These have large expanses of intertidal sandflats which support a typical diversity of macro-invertebrate and algae species. The sandflats are fringed in places by saltmarsh vegetation. Taken as a whole the saltmarsh at the site is structurally diverse, occurring as a narrow fringe or in isolated pockets or as extensive flat salt meadows. The presence of important populations of rare and threatened habitats, plants and animals, along with breeding and wintering birds, makes this a site of very high conservation value.

7.19. The West Ardara/Maas Road SAC is an extensive site which overlaps with Sheskinmore Lough SPA (004090), Inishkeel SPA (004116) and West Donegal Coast SPA (004150). It adjoins Lough Nillan Bog (Carrickatlieve) SAC (000165), Coolvoy Bog SAC (001107) and Lough Nillan Bog SPA (004110). The Inishkeel SPA (004116) c 6.5 km north west of the appeal site is a small island situated approximately 500 m offshore, but in the inner part of Gweebarra Bay and is of special conservation interest for the Barnacle Goose. I am satisfied the European sites other than the West of Adara /Maas Road SAC, are initially screened out from this assessment, based on their conservation objectives and the separation distance from the appeal site to these European sites.

7.20. Stormwater on site is proposed to discharge into the watercourse and I have highlighted concerns in section 7.6 regarding the potential for the wastewater treatment proposals to pose a risk to surface waters entering this drain and potential to groundwater. Consequently, based on the information provided, there is a lack of certainty and the proposals may have potential to result in a reduction in the water

quality within the SAC marine habitats. Therefore, it cannot be reasonably ruled out beyond scientific doubt that there would not be significant effects, either individually or in combination with other plans or projects, on the basis of the information available.

7.21. **In-Combination Effects**

7.22. I do not consider that there are any specific in-combination effects that arise from the development when taken in conjunction with other plans or projects. I note the high density of wastewater treatment plants in the vicinity.

7.23. **Appropriate Assessment Screening Conclusion**

7.24. On the basis of the information provided with the application and in response to the appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the West of Ardara/Maas Road SAC, (Site code 000197), in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

7.25. **Note:** The issue of AA screening was not raised in the appeal but the Board as the competent authority will carry out a screening.

8.0 **Recommendation**

8.1. I recommend that permission be refused. It may be noted that No.1 is a new issue, and the Board may wish to circulate same, may rely on the substantive reasons provided or attach as a note.

9.0 **Reasons and Considerations**

1. The applicant has submitted application drawings and further information where the Ordinance Survey site outlined in red does not correspond and is smaller than the site plan outlined in red. In such circumstances, the Board is not satisfied that the application can be properly assessed or that consent has been properly provided to make the application over the entire lands outlined in the site plan.

2. Notwithstanding that the proposed development is located down slope and screened from the local road, it is considered that the proposed development, taken in conjunction with other buildings in the vicinity, would be visible from the N56 National Road, would introduce an undesirable new development line on this level of the hill and create an ad hoc and haphazard series of buildings viewed from the coastal road section of the N56 National Road which would fail to assimilate into the receiving landscape. Furthermore, it is considered that the length and layout of the proposed new access road to serve the proposed dwelling would create an unacceptable scar on the hillside. Accordingly, it is considered the proposed development would negatively interfere with the character and quality of the landscape which is designated as an area of High Scenic Amenity and would cause a detrimental change to and further erode the rural character of the area, contrary to planning policies RH-P-1, RH-P-2 and NH-P-7 in the County Donegal Development Plan 2018-2024.
3. Having regard to the location of the access/egress point onto a local road of poor width and alignment, the close proximity to a national school, the proposed gradient of the access road, and the adequacy of the submitted traffic survey the Board is not satisfied the proposed minimum visibility lines are sufficient and would therefore endanger public safety by reason of a traffic hazard or obstruction of road users.
4. Having regard to the soil conditions and the proposed discharge of surface water into a watercourse (Code:MULNAMIN_BEG_010) which discharges into the West of Ardara/Maas Road SAC, (Site code 000197), the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system and the incorporation of site drainage improvement works, as the impact on the West of Ardara/Maas Road SAC, (Site code 000197) and the high density of other effluent disposal

units serving property in the vicinity has not been addressed. The proposed development would, therefore, be considered prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

5. On the basis of the information provided with the application and in response to the appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the West of Ardara/Maas Road SAC, (Site code 000197), in view of the sites' conservation objectives. In such circumstances, the Board is precluded from granting permission.

I confirm that the report represents my professional planning assessment, judgment and opinion on the matter assigned to me and that no person has influenced or tried to influence, directly or indirectly, the exercise of my professional judgment in an improper or inappropriate way.

Rosemarie McLaughlin
Planning Inspector

3rd September 2023